

FRIDAY UPDATE – FEBRUARY 24, 2006

*The weekly update of the activities of the Indiana General Assembly
A publication of the Indiana Judicial Center*

The final week of Committee meetings is now complete. Below are summaries of bills heard this week in committee. Next week we will provide you with a list of the bills that were heard on third reading.

If you are interested in reading the text of any bill introduced this session, you may find bill information on Access Indiana at <http://www.in.gov/apps/lsa/session/billwatch/billinfo>.

Past issues of the Friday Update for 2006 are available on-line at <http://www.in.gov/judiciary/center/leg/index.html>.

Civil Law

The House Family, Children and Human Affairs Committee heard **SB 33**, which provides for **volunteer advocates for incapacitated adults**. The legislation removes age 55 as the bottom limit on who may have a volunteer advocate. It provides a volunteer advocate may represent someone at least 18 years old. The bill passed 8-0.

The House Judiciary Committee heard **SB 296, punitive damages**. The bill provides that the State's interest in punitive damages is effective when the trier of fact announces the verdict, and that the Attorney General can negotiate and compromise the portion of punitives that are awarded to the State. The Indiana Trial Lawyer's Association and the Attorney General's office testified in favor of the bill, and representatives of the insurance industry testified against it. The Committee amended the title of the bill to remove "communications of sympathy," as that topic had been removed from the bill at an earlier stage and is now the subject of a House Bill. The Committee also amended the bill to include references to other funds into which punitive damages are paid, but declined to add language that precluded the Attorney General from arguing about the merits of the case. The bill passed as amended 7-3.

After hearing public testimony last week on **HB 1235** concerning **isolation and quarantine**, the Senate Judiciary Committee discussed several amendments to the bill. Sen. Steele explained to the Committee that he headed a subcommittee that made the recommended amendments, and that Judge Najam and Judge Chezem both agreed with the changes. The amendments require that the isolation and quarantine provisions apply only to dangerous communicable diseases and that judicial quarantine orders be made by clear and convincing evidence. The Committee took the amendments by consent and passed the bill as amended 8-0.

The Senate Judiciary Committee also heard **HB 1306** concerning **various corporate law matters**. The Committee heard an explanation of the bill from Indiana Secretary of State Todd Rokita. Secretary Rokita explained that the bill is another phase in his office's efforts to modernize business law in Indiana. He said that the provisions of the bill would make Indiana more "business friendly" and would encourage businesses to stay in Indiana and relocate here. He highlighted changes that would allow a business to convert from one type to another (such as from an S corporation to an LLC), give value to "sweat equity", require disclosure of certain information to LLC members, and create a "springing member" provision for LLC's. The bill was amended in Committee to clarify that conversions must happen in accordance with Indiana corporate law. The bill passed as amended 9-0.

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The Senate Corrections, Criminal and Civil Matters Committee heard **HB 1367**, which would have established a commission to study **limited liability for small charities**. Author Rep. Thomas immediately offered an amendment to remove the study committee and to reinsert the original language, deleted in the House, which would confer the liability limitations on small charities equal to limitations for governmental liability under the Tort Claims Act. A representative from the Governor's office spoke in favor of this change to the bill, followed by a Trial Lawyers spokesperson who opposed it. A number of Committee members explained their reasons for voting against the bill, which failed to pass in a 4-6 vote.

Criminal Law

The House Roads and Transportation Committee heard **SB 145** concerning **vehicle forfeiture and driving while intoxicated**, which was presented by Sen. M. Young. Among other items, the bill provides for the forfeiture of a person's vehicle if the person commits operating while intoxicated or operating a vehicle with a suspended license and the person has previously been convicted of two OWIs within five years. Sen. Young explained that this bill would improve the safety of citizens by taking away the "weapons" used by those who are controlled by alcohol. The Committee, adopted by consent, several amendments: 1) requiring courts granting probationary driving privileges after the second OWI offense to order the use of ignition interlock device for six months; 2) amends the definition of chemical test to include determining the presence of metabolites of controlled substances or drugs; 3) adds that for purposes of IC 9-26-1 an accident does not require the proof of a collision if the accident involves serious bodily injury or death; 4) adds certified phlebotomist to list of those who can obtain bodily substance samples; 5) provides that the BMV shall suspend a person's driving privileges for two years if the person refuses a chemical test and has at least one prior OWI conviction; 6) provides that a person commits a class A infraction if the person refuses a portable breath test or chemical test and has at least one prior OWI conviction; 7) requires the court to suspend a person's driving privileges for one year for refusal as a class C infraction and two years for the class A infraction. The Prosecuting Attorney's Council testified in support of the bill and the amendments. The Public Defender's Council raised concerns that the proposed amendments had not been reviewed or discussed in any of the Judiciary or Criminal Law Committees. The bill passes as amended 8-2.

The House Courts and Criminal Code Committee heard **SB 192, bail requirements**. The bill allows a court to require a defendant to post a combination of property and surety bonds as a condition of bail, and allows the court to retain all or part of the security for the bond to pay publicly paid costs of representation and, if the defendant is convicted, the fines, costs, fees, and restitution that the court may order the defendant to pay. The bill passed 10-0.

The House Courts and Criminal Code Committee also heard **SB 193, controlled substances**. The bill permits the destruction of the equipment used in the illegal manufacture of controlled substances, permits law enforcement to inspect retailer's logs of the sale of pseudoephedrine, and separates out methamphetamine crimes from other narcotics, among other things. The Indiana Criminal Justice Institute testified in favor of the bill, explaining that the federal government conditions payment of some federal funds on the reporting of statistics on methamphetamine (not just narcotics as a group). The Indiana State Police also testified in favor of the bill. The Committee amended the bill to include certain chemical compounds to the glue-sniffing and huffing statutes, and to the OVWI statute. The bill passed as amended 9-0.

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The House Courts and Criminal Code Committee heard **SB 275**, which gives judges more flexibility in dealing with persons who fail to complete **forensic diversion programs**, including revoking probation, lifting a stay of execution of a nonsuspendible part of a sentence, ordering that a suspended sentence be executed, or ordering work release. The bill passed 9-0.

The House Courts and Criminal Code Committee also heard **SB 338**, on **false identification and criminal gang enhancement**. The bill makes possessing a “created fake ID” (rather than a real ID that has been altered) a crime. It also allows a convict’s sentence to be doubled, if the prosecution proves beyond a reasonable doubt that the person was a member of a criminal gang at the time of the offense and committed the offense in affiliation with a gang. Marion County Prosecutor and a private citizen from Goshen, Indiana testified in favor of the bill. The Committee amended the bill to explicitly state that the Rules of Evidence govern the admission of expert testimony regarding gang membership. The bill passed as amended 10-0.

The Senate Judiciary Committee heard **HB 1128, ignition interlock devices**. Rep. Duncan explained that the bill requires that a judge granting probationary driving privileges after a second OWI offense must order the use of an ignition interlock device for six months. The following groups testified in support of the bill: National Interlock Service, Mothers Against Drunk Driving, the Indiana Association of Beverage Retailers and the Insurance Institute of Indiana. The Public Defender Commission suggested to the committee that the use of interlock devices should be left to judicial discretion and that a provision for indigent offenders should be included. The bill passed 7-0.

The Senate Corrections, Criminal and Civil Matters Committee met to discuss **HB 1281**, which will amend the **domestic battery offense** so that the prior conviction raising the offense to a D felony includes a conviction of a substantially similar offense in another jurisdiction. The bill also makes domestic battery a D felony if committed in the presence of a child under 16, and enacts a new D felony of strangulation. After hearing testimony in favor of the bill, the Committee amended the strangulation offense to add the “rude, insolent, or angry manner” *mens rea*. The amended bill passed 9-1.

The Senate Corrections, Criminal and Civil Matters Committee then heard **HB 1024**, which increases the penalties for **criminal confinement**. After hearing testimony in favor of the bill from police and a victim, the Committee discussed the fiscal impact the increases in penalties would have. At that point, a DOC spokesperson advised that the Department had calculated a substantial fiscal impact of several million dollars. Some members were skeptical about the accuracy of the estimated impact and others hoped that the DOC would not be objecting to every penalty increase having an adverse fiscal impact, but the bill was amended to remove all the proposed penalty increases, including both the increase for basic confinements from D felony to C felony and the increases of the present C and B felonies to B and A grade, respectively. One C felony increase was kept, for confinements which result in serious bodily injury. The amended bill passed 9-1.

The Senate Corrections, Criminal and Civil Matters Committee heard **HB 1028, firearms and self-defense**, which removes the “retreat” requirement from the criminal code statute on permitted uses of deadly force and expands the deadly force authorizations to include repelling unlawful entries of occupied motor vehicles. Sen. Nugent immediately proposed the complete removal of the part of the bill which would have prohibited businesses from banning firearms in vehicles in parking lots and other locations on their premises. Sen. Long elicited assurances from Sen. Nugent and author Rep. Koch that there would not be second reading reinsertions of this ban on no-firearms prohibitions. After testimony

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from anti-gun violence witnesses against the bill (the NRA representative could not appear to testify in favor, Sen. Nugent said, due to a sudden family emergency), the bill passed as amended 9-2.

The Senate Corrections, Criminal and Civil Matters Committee heard **HB 1155**, which would require **lifetime parole and GPS monitoring for child molesters**. Chairman Long announced that an amendment was proposed to add to 1155 the language in SB 6 (lifetime parole for child molesters), SB 12 (administration of sex offender registry), and SB 246 (sex offenders). These Senate Bills would probably be subjected to second reading amendments to make them consistent with the revised HB 1155, Long said. For the HB 1155 parole condition prohibiting a child molester from working at any “attraction designed to be primarily enjoyed by children less than sixteen,” Sen. Young’s amendment deleting the list of specific examples (e.g., “haunted house,” “circus”) was accepted by agreement. Also accepted was Sen. Young’s amendment to prohibit a stalker’s taking up any residence within 1,000 feet of the victim’s house (only “new” residences with 1,000 feet were prohibited in the House version). An amendment proposed by Prosecuting Attorneys Council’s Steve Johnson for a DNA registry was accepted by agreement based on his assurances that funding is now available so that any fiscal impact for registry legislation will be negligible. Sen. Long permitted the amendment to be presented but said that the registry provision would be removed on second reading if it was found to have a fiscal impact which would require the bill’s referral to the Rules Committee. The amended bill passed 11-0.

The Senate Corrections, Criminal and Civil Matters Committee heard **HB 1093**, which creates a B misdemeanor for **possession of a knife on school property**, enhances the offense to an A misdemeanor if committed with a prior conviction, and makes the offense a D felony if it resulted in bodily or serious bodily injury. The bill also expands the requirement that intimidation of teachers be reported to police to include batteries or harrassment of school employees. After favorable testimony from teachers and principals, the bill passed 11-0.

The Senate Corrections, Criminal and Civil Matters Committee next heard **HB 1414**, which criminalizes **human and sexual trafficking**. By consent the bill was amended to remove the provision for a task force to study and report on such trafficking; the amendment replaced the task force with a referral to the Sentencing Policy Study Commission. After favorable testimony was received from victims’ groups, the bill was again amended on Sen. Bray’s suggestion to require that the B felony variant of the proposed trafficking crime be reduced to a C felony for the person who pays another “for an individual who is forced into” forced labor, involuntary servitude, marriage, or prostitution. The amendment also, on Sen. Lanane’s motion, added a requirement that in order to be guilty, the defendant who makes the payment must have had knowledge that the person paid for was “forced into” the listed servitudes. The bill passed as amended 11-0.

Family & Juvenile Law

The Tax and Fiscal Policy Committee heard **HB 1001**, regarding **state funding for child services**. Sen. Kenley, Chair, opened the meeting by stating that the provision to shift funding of child welfare services to the State has been taken out. Although he believes that the funding needs to be shifted, “because counties have been carrying the fiscal load and Judges have been controlling the system with the help of CASAs”, he would prefer to wait until 2007 when the budget comes up again. This is partly in deference to Sen. Meek’s bill from 2005, establishing Regional Services Councils and providing funding for additional caseworkers, to allow these programs time to work. Sen. Kenley indicated he expects Judges, CASAs and the DCS to work together because “this turf battle is not in keeping with the spirit of what is best for children.” No public testimony was allowed.

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The House Family, Children and Human Affairs Committee heard **SB 132**, legislation to clean up the statutory changes needed to create the **Department of Child Services** and make it separate from FSSA. After an amendment adopted by consent, which provides childcare agencies and not DCS would conduct record checks on their own employees, the bill passed as amended 11-0.

The House Family, Children and Human Affairs Committee also heard **SB 139**, which creates **various time limits in CHINS cases**, amends the law concerning paternity affidavits, changes criminal record check procedures, and amends child-care licensing procedures. An amendment to this bill changes the time in which a court may conduct a fact-finding hearing in CHINS from 45 days in the previous version of the bill to 60 days. A court is permitted to extend the time to complete a fact-finding hearing an additional 60 days if all parties in the action consent to the additional time. The amendment also provides the juvenile court shall order the DCS to file a progress report in a CHINS case every 3 months after the dispositional decree is entered, but keeps the 6 month review hearings under present law. It provides a periodic case review may occur at any time after the progress report is filed. It also removes a provision permitting the court to order the probation department to file a progress report on a dispositional decree in a CHINS case. This amendment also provides a paternity affidavit may not be rescinded after more than 60 days, unless a court determines fraud, duress, or material mistake of fact existed when the affidavit was created, and at the request of a man is a party to the affidavit, the court has ordered a genetic test and the test indicates the man is excluded as the father of the child. This amendment also contains an emergency clause, requiring all the amendments in the bill to be effective upon passage. Judge Charles Pratt, Allen Superior Court, and Chair of the Juvenile Justice Improvement Committee, testified in favor of the amended legislation at the close of the Committee hearing. The bill passed as amended 10-0.

The House Ways and Means Committee heard **SB 153** concerning **state central collection unit and child support**, which passed 23-0.

Judicial Administration

The Senate Appropriations Committee heard **HB 1156** concerning **various provisions concerning courts**. This bill addresses excessive property tax levies for new court operating expenses; provides jury pools be formed from lists approved by the Supreme Court; prohibits employers from subjecting employees to adverse employment action and using benefit time because of jury duty; increases the number of judges and magistrates for Marion Superior Courts; and raises court fees. The Committee amended, by consent, the provisions of the bill relating to the increase in court costs. The amendment provides for an increase of the court administration fee under IC 33-37-5-27 from \$2 to \$3 instead of the increase in the case type cost fees. The amended bill passed 12-0.

The Senate Judiciary Committee considered **HB 1158** concerning **small claims, civil actions and sheriff's fees**. Rep. Richardson explained that the bill specifies that the 25% of the judicial salary fees collected by a Marion County small claims court that is not deposited in the state general fund must be deposited in the general fund of the township in which the small claims court is located. This provision was omitted from the judicial salary bill last year. The bill also creates a \$10 small claims garnishee service fee and a \$10 garnishee service fee, and provides that these fees are to be collected in small claims and civil actions involving more than three garnishees or garnishee defendants. The bill also increases the fees a sheriff may charge for reports issued and service of process, and adds county sheriffs to the list of county officers entitled to appoint a chief deputy. The bill was also amended to

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allow the Indiana State Police to increase fees for reports and DNA collection. Representatives from the Marion County Sheriff, Association of Indiana Counties, Indiana Fraternal Order of Police, Morgan County Sheriff, the Indiana Sheriffs Association and the Indiana State Police testified in favor of the bill, which passed as amended, 8-0.

Miscellaneous

The House Courts and Criminal Code Committee heard **SB 300** on the **victim's compensation fund**. Sen. Long, author, explained that the bill was prompted by CJI's concerns regarding the integrity of the victim's compensation fund, and that the bill places fiscal discipline on the fund, in part by changing the class of victims who can receive funds, requiring consideration of other resources given to the victims, placing limits on attorneys fees, and delaying the disbursement of funds until the investigation of the crimes is substantially complete. CJI and the Indiana Hospital Association testified in favor of the bill. Rep. Foley proposed an amendment to the bill containing largely non-substantive changes to the bill. A representative of the Hospital Association requested an amendment of the amendment to add language regarding sexually transmitted diseases, which the Committee adopted by consented. The bill passed as amended 9-0.